IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10664 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE J.R.VORA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MOHD. HUSSAIN @ BHURIYO MANJIBHAI KHOKHAR

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

MR U.R. BHATT, AGP for Respondents

CORAM : MR.JUSTICE J.R.VORA

Date of decision: 05/12/2000

ORAL JUDGEMENT

1. The petitioner has filed this petition under Article 226 of the Constitution challenging his detention order passed by the Police Commissioner, Ahmedabad City on 28th July, 2000 in exercise of powers conferred upon

him under Sec. 3(1) of the Gujarat Prevention of Anti Social Activities Act, 1985 (PASA for short) and the petitioner came to be detained on 28th July, 2000.

2. The grounds of detention reveals that in all three crimes are registered against the petitioner before Anand Town Police Station, Bapunagar Police Station, Ahmedabad and Sola High Court Police Station, Ahmedabad, on 5th of July, 2000, 16th of July, 2000, 19th of July, 2000 respectively under sections 379, 457, 380 and 114 of the Indian Penal Code. The detaining authority considered the materials of investigation in the above said crimes registered against the petitioner and came to the conclusion that the petitioner was involved in theft of vehicles and house breaking. In addition to this, the detaining authority also considered the statements of two witnesses who on assurance of anonymity offered their statements before the concerned authority that the petitioner has involved in theft of the vehicles and was hardened criminal. The witnesses were beaten by the petitioner and obstructed to public order. The incident which the independent witnesses have narrated are dated 6th of July, 2000 and 20th of June, 2000 respectively. From the above material, the detaining authority reached to the conclusion that the petitioner was a "dangerous person" within the meaning of Sec. 2(c) of the PASA Act. Hence the impugned order was passed against the petitioner.

3. Learned Advocate Mr.H.R. Prajapati for the petitioner and learned Advocate Mr. Udai Bhatt for the respondents were heard.

4. Various grounds urged on behalf of the petitioner during hearing against the detention order. The main ground which was urged was regarding non-considertion of less drastic remedy available to the detaining authority. It was urged that remedy to cancel the bail was available to the detaining authority and that is not resorted to. It was urged that this is the non-application of mind, vitiating the order.

5. In ZUBEDABIBI RASIDKHAN PATHAN vs.STATE OF GUJARAT, reported in 1995 (2) GLR 1134, the Division Bench of this Court observed that the powers granted to the court for the cancellation of the bail under Sec. 437(5) of the Cr.P.C. are far more wide in import and intent. In that case, that remedy was not availed by the detaining authority and the court observed that

non-consideraton of less drastic remedy would suggest the non-application of mind on the part of the detaining authority. This view is fortified by the Division Bench of this Court in Letters Patent Appeal No. 1056 of 1999, in the case of YUNUSBHAI HASANBHAI CHANCHI vs. DISTRICT MAGISTRATE, decided on 15th of September.

6. In the present case on perusing the grounds, the detaining authority observed that the petitioner was released on bail. However, the detaining authority has expressed possibility that the petitioner was likely to continue his illegal activities while he was on bail and, therefore, the petitioner was required to be detained to prevent him from indulging in anti social activities which was obstruction to the public order. It is observed by the detaining authority that the procedure for the cancellation of bail under Sec. 437(5) of the Cr.P.C. was likely to take time and hence the order impugned came to be passed. The total non-application of mind by the detaining authority emerges from these observations of the detaining authority in the grounds of detention. As stated above, it was the duty of the detaining authority to consider less drastic remedy available to him. In this case, without resorting to the remedy under Section 437(5) of the Cr.P.C., the detaining authority has simply brushed aside the request by merely observing that the procedure for cancellation of bail was likely to take some time. This could not be said to be the proper application of mind to the facts of the case. In this view of the matter, since the order is vitiated by non-application of mind by the detaining authority, the same is required to be quashed and set aside

6. In view of the above discussion, this petition is allowed. The order passed by the Police Commissioner, Ahmedabad City on 28th July, 2000 against the petitioner under the PASA Act is hereby ordered to be quashed and set aside. Petitioner - Mohd. Hussain @ Bhuriyo Manjibhai Khokhar is ordered to be set at liberty forthwith if he is not required to be detained for any other purpose. Rule made absolute. DS permitted.

(J.R. Vora, J.)

p.n.nair